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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,843	07/16/2003	Shinji Matsushita	03418/LH	1800

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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK, NY 10001-7708

EXAMINER

YODER III, CHRISS S

ART UNIT	PAPER NUMBER
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2622

MAIL DATE	DELIVERY MODE
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01/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/621,843

Applicant(s)

MATSUSHITA, SHINJI

Examiner

Chriss S. Yoder, III

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 13, 2007 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sannoh et al. (US PGPub # 2002/0149689) in view of Niikawa et al. (US PGPub # 2002/0171747).

2. In regard to **claim 1**, note Sannoh discloses the use of an imaging device, comprising an electronic camera which images an observation image (paragraph 0030 and figure 1), a display which displays the observation image imaged by the electronic camera (paragraph 0042 and figure 1:17), and a display setting portion which sets display items of photograph information relating to the observation image, and which displays the photograph information superimposed on the observation image (paragraphs 0041-0042).

Therefore, it can be seen that Sannoh fails to disclose the use of a memory which stores image data of the observation image imaged by the electronic camera, that the displayed observation image is image data that has been stored in the memory, and that the imaging device is used with a microscope. Niikawa discloses the use of a memory which stores image data of the observation image imaged by the electronic camera (paragraphs 0072-0078), and the display of the observation image that has been stored in the memory (paragraphs 0072-0078). Niikawa teaches that the use of a memory which stores image data of the observation image imaged by the electronic camera and the display of the observation image that has been stored in the memory is preferred in order to enhance convenience by allowing the user to contrast the captured image with additional information (paragraph 0082). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Sannoh device to include the use of a memory which stores image data of the observation image imaged by the electronic camera and the display of the observation image that has been stored in the memory, in

order to enhance convenience by allowing the user to contrast the captured image with additional information, as suggested by Niikawa.

And as for the use of the imaging device with a microscope, Official Notice is taken that the concepts and advantages of using a digital camera with a microscope are notoriously well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Sannoh device to be used in conjunction with a microscope in order to provide a real time display of microscopic objects to more than one user through the use of a display means as well as allowing the storage of a permanent copy of the observed image by recording the captured data.

3. In regard to **claim 2**, note Sannoh discloses that the display setting portion sets at least one of a line color, a line width and a line type as the display items to maintain a visual recognition property of the photograph information for the observation image (paragraph 0044).

4. In regard to **claim 3**, note Sannoh discloses that the photograph information of the observation image includes at least one of a photometry, a focus, a color balance and a scale (paragraph 0043).

5. In regard to **claim 4**, note Sannoh discloses that the display setting portion sets at least one of a line color, a line width and a line type as the display items to maintain a visual recognition property of the photograph information for the observation image (paragraph 0044).

6. In regard to **claim 5**, note Sannoh discloses the use of an imaging device that displays the observation image along with photograph information and adjusts the color

of the photograph information (paragraph 0044). Therefore, it can be seen that the primary reference of Sannoh in view of Niikawa fails to disclose the use of a complementary color generator which sets a display color of the photograph information to a complementary color of a background image of the observation image. Official Notice is taken that the concepts and advantages of using a complementary color generator to adjust the color of data that is to be displayed along with the image based on the color of the background of the image are notoriously well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to modify the primary device to include the use of a complementary color generator which sets a display color of the photograph information to a complementary color of a background image of the observation image in order to prevent the photograph information from disappearing in the image in the event that the image background and the photograph information are the same color.

7. In regard to **claims 6-7**, note Sannoh discloses the use of an imaging device that displays the observation image along with photograph information, as claimed in claim 1 above. Therefore, it can be seen that the primary reference of Sannoh in view of Niikawa lacks the use of a color determination unit which determines a color for each one pixel of a background image of the observation image, a histogram computing unit which computes a histogram for each color determined by the color determination unit, and that the display setting portion sets a display color of a plurality of sets of the photograph information based on the computed histogram. Official Notice is taken that the concepts and advantages of using a color determination unit and histogram

computing unit to calculate the number of pixels of each color within an image in order to adjust the display color of photograph information are notoriously well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to modify the primary device to include the use of a color determination unit and histogram computing unit to calculate the number of pixels of each color within an image to adjust the display color of photograph information in order to prevent the photograph information from disappearing in the image in the event that the image background and the photograph information are the same color.

8. In regard to **claim 8**, note Sannoh discloses the use of a display pattern generator which generates a pattern for displaying a plurality of sets of the photograph information (paragraph 0044).

9. In regard to **claim 9**, note Sannoh discloses the use of a display pattern memory which stores a predetermined display pattern as a table (paragraph 0033 and 0051, and figure 3).

10. In regard to **claim 10**, note Sannoh discloses the use of an imaging device comprising an electronic camera which images an observation image captured (paragraph 0030 and figure 1), a display which displays the observation image imaged by the electronic camera and a plurality of sets of photograph information relating to the observation image, and with displays the plurality of sets of photograph information superimposed on the observation image (paragraph 0042-0044 and figure 1:17).

Therefore, it can be seen that Sannoh fails to disclose the use of a memory which stores image data of the observation image imaged by the electronic camera, that

the displayed observation image is image data that has been stored in the memory, and that the imaging device is used with a microscope. Niikawa discloses the use of a memory which stores image data of the observation image imaged by the electronic camera (paragraphs 0072-0078), and the display of the observation image that has been stored in the memory (paragraphs 0072-0078). Niikawa teaches that the use of a memory which stores image data of the observation image imaged by the electronic camera and the display of the observation image that has been stored in the memory is preferred in order to enhance convenience by allowing the user to contrast the captured image with additional information (paragraph 0082). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Sannoh device to include the use of a memory which stores image data of the observation image imaged by the electronic camera and the display of the observation image that has been stored in the memory, in order to enhance convenience by allowing the user to contrast the captured image with additional information, as suggested by Niikawa.

And as for the use of the imaging device with a microscope, Official Notice is taken that the concepts and advantages of using a digital camera with a microscope are notoriously well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Sannoh device to be used in conjunction with a microscope in order to provide a real time display of microscopic objects to more than one user through the use of a display means as well as allowing the storage of a permanent copy of the observed image by recording the captured data.

11. In regard to **claim 11**, note Sannoh discloses that at least one of a line color, a line width and a line type displayed on the display of the plurality of sets of photograph information is settable (paragraph 0044).

12. In regard to **claim 12**, note Sannoh discloses that the plurality of sets of the photograph information includes at least one of a photometry, a focus, a color balance and a scale (paragraph 0043).

13. In regard to **claim 13**, note Sannoh discloses that at least one of a line color, a line width and a line type displayed on the display of the plurality of sets of photograph information is settable (paragraph 0044).

14. In regard to **claim 14**, note Sannoh discloses the use of an imaging device that displays the observation image along with photograph information and adjusts the color of the photograph information (paragraph 0044). Therefore, it can be seen that the primary reference of Sannoh in view of Niikawa fails to disclose the use of a complementary color generator which sets a display color of the photograph information to a complementary color of a background image of the observation image. Official Notice is taken that the concepts and advantages of using a complementary color generator to adjust the color of data that is to be displayed along with the image based on the color of the background of the image are notoriously well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to modify the primary device to include the use of a complementary color generator which sets a display color of the photograph information to a complementary color of a background image of the observation image in order to prevent the photograph

information from disappearing in the image in case when the image background and the photograph information are the same color.

15. In regard to **claims 15-16**, note Sannoh discloses the use of an imaging device that displays the observation image along with photograph information, as claimed in claim 1 above. Therefore, it can be seen that the primary reference of Sannoh in view of Niikawa lacks the use of a color determination unit which determines a color for each one pixel of a background image of the observation image, a histogram computing unit which computes a histogram for each color determined by the color determination unit, and that the display controller which sets a display color of the plurality of sets of the photograph information based on the computed histogram. Official Notice is taken that the concepts and advantages of using a color determination unit and histogram computing unit to calculate the number of pixels of each color within an image in order to adjust the display color of photograph information are notoriously well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to modify the primary device to include the use of a color determination unit and histogram computing unit to calculate the number of pixels of each color within an image to adjust the display color of photograph information in order to prevent the photograph information from disappearing in the image in the event that the image background and the photograph information are the same color.

16. In regard to **claim 17**, note Sannoh discloses the use of a display pattern generator which generates a pattern used to display the plurality of sets of the photograph information (paragraph 0044).

17. In regard to **claim 18**, note Sannoh discloses the use of a display pattern memory which stores a predetermined display pattern as a table (paragraph 0044).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chriss S. Yoder, III whose telephone number is (571) 272-7323. The examiner can normally be reached on M-F: 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 4, 2008


LIN YE
SUPERVISORY PATENT EXAMINER